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MAILED

JUL 16 2009

In re Application of	:	OFFICE OF PETITIONS
Nancy C. Lan	:	
Application No. 10/644783	:	DECISION ON APPLICATION
Filing/371(c) Date: 08/21/2003	:	FOR PATENT TERM ADJUSTMENT
Patent No. 7,393,872	:	
Issued: 07/01/2008	:	
Attorney Docket Number:	:	
1483.0370003	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)", filed August 26, 2008. Patentee requests that the revised patent term adjustment indicated on the face of the patent be corrected from 231 days to 287 days.

The application for patent term adjustment is granted to the extent indicated herein.

On July 1, 2008, the above-identified application matured into U.S. Patent No. 7,393,872. The patent issued with a PTA of two hundred thirty-one (231) days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See, 37 CFR 1.705(d).

Patentees do not dispute the adjustments of 441 days. Further, patentees do not dispute the reductions of 63 days and 91 days attributed to Applicant pursuant to 37 CFR 1.704(b). Instead, applicants contest the reduction of 23 days and 33 days pursuant to 37 CFR 1.704(c)(10) accorded in connection with the amended drawings filed under 37 CFR § 1.312 on May 7, 2008.

Patentee notes that the Amendment, including drawings, filed May 7, 2008, was filed in response to an Office communication expressly requested by the Examiner. As such, Patentee asserts that the Amendment and drawings have the practical effect of advancing the patent prosecution and cannot reasonably be interpreted as a circumstance of failing to engage in reasonable efforts to conclude prosecution or examination.

Patentee's arguments have been carefully considered, but are not found convincing. As to patentee's contention that the drawings were expressly requested by the Examiner, patentee is advised that in accordance with 37 CFR 1.704(c)(10), submission of an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed is deemed a failure to engage in reasonable efforts to conclude prosecution.

The Office clarified the Rule in 1247 Off. Gaz. Pat. Office 111 (June 26, 2001), which states: "After a 'Notice of Allowance' has been mailed, submissions by an applicant that cause delay in processing or examination of an application will be considered a 'failure to engage in reasonable efforts' to conclude prosecution."

Moreover, papers that will be considered a failure to engage in reasonable efforts to conclude processing or examination of an application include: (1) a request for a refund; (2) a status letter; (3) amendments under 37 CFR 1.312; (4) late priority claims; (5) a certified copy of a priority document; (6) drawings; (7) letters related to biologic deposits; and (8) oaths or declarations. (emphasis supplied). See, MPEP 2732.

In this instance, Notice of Allowance was mailed on November 8, 2007. The issue fee was submitted February 8, 2008. Thereafter, a drawing requirement was mailed on March 25, 2008. An amendment and drawings were submitted May 7, 2008. Accordingly, the adjustment of 441 days is properly reduced 23 days in accordance with 37 CFR 1.704(c)(10), the reduction having commenced May 7, 2008, the date that the post-allowance submission was filed, and ended May 29, 2008, the date that the Office communication in response thereto was mailed.

The adjustment was errantly reduced an additional 33 days in connection with the drawings filed May 7, 2008. However, a review of the Office communication mailed May 29, 2008 sufficiently establishes that said Office communication was mailed in response to both the amendment and drawings, both of which were filed May 7, 2008.

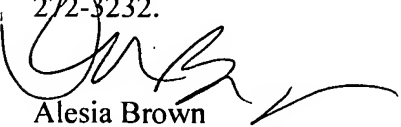
In view thereof, at the time of issuance, the patent was entitled to an adjustment of 264 days (adjustments totalling 441 days less reductions totalling 177 days).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the Office error pursuant to 37 CFR 1.704(c)(10) as noted *supra*. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 264 days.

Any request for reconsideration of this decision must be submitted within ONE MONTH of the mail date indicated herein. The time period for seeking reconsideration is not subject to extension under 37 CFR 1.136.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods, at (571) 272-3232.



Alesia Brown
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,393,872 B2

DATED : July 1, 2008

INVENTOR(S) : Lan

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (231) days.

Delete the phrase "by 231 days" and insert – by 264 days--